

**DRAFT CHECKLIST FOR ELIGIBILITY DETERMINATION APPLICATIONS FROM
ELIGIBILITY DETERMINATION APPLICATIONS FROM INDIAN TRIBAL
GOVERNMENTS FOR CLEAN WATER ACT PROGRAMS**

(Sections 106, 303, 314, 319, 401, 402 & 404)

**SAFE DRINKING WATER ACT (PWSS & UIC) and
RESOURCE CONSERVATION RECOVERY ACT (RCRA) SUBTITLE S & D**

Section 518(e) of the CWA establishes criteria an Indian Tribe must meet before treatment in the same manner as a state (TAS) is authorized. These criteria are: (1) the Tribe is Federally recognized; (2) the Tribe carries out substantial governmental duties and powers over a Federal Indian reservation; (3) the Tribe has appropriate regulatory authority over surface waters of the reservation; and (4) the Tribe is reasonably expected to be capable of administering the relevant CWA program; for example, the tribe is reasonably capable of administering a Section 106 water quality management grant. **Are these four criteria applicable for evaluating SDWA, RCRA and CERCLA TAS applications?**

These four criteria are specified in the CWA, **what about other programs, SDWA, RCRA and CERCLA?**) and implementing regulations. The regulations provide guidance as to how Tribes can meet the four criteria. Below is a checklist developed to assist Region 10 staff in reviewing TAS applications. This does not mean that if a Tribe provides all of the information on the checklist they will be eligible for TAS; rather it sets general guidelines on what we should look for to see if a TAS application is complete. Not all of the items on the checklist are mandated by the regulation. However, the items listed represent, based on our experience to date, the information that Region 10 is looking for in a complete application.

The Tribe is Federally recognized.

The Secretary of the Interior publishes in the Federal Register a list of Federally recognized Tribes. The applicant should submit a recent copy of the list from the Federal Register to establish the fact that the Tribe has Federal recognition. As of the date of this memo, the most recent version is dated October 21, 1993.

(Actual submission is not necessary if the EPA has already granted TAS to a tribe; a reference to an earlier application is sufficient).

(1) _____ FEDERAL REGISTER NOTICE

_____ FEDERAL REGISTER NOTICE DATE

The Tribe carries out substantial governmental duties and powers over a Federal Indian reservation.

The applicant must submit a narrative statement that describes: (1) the form of the Tribal government; (2) the types of governmental functions performed by the Tribal governing body (such as the exercise of police powers affecting the health, safety, and welfare of the affected population, taxation, or the exercises of the power of eminent domain), and; (3) the source of the Tribal government's authority to carry out the governmental functions currently being performed.

NARRATIVE DESCRIPTION:

- (2) _____ Description of the form of Tribal Government (e.g. a description of the organizational structure of the Tribe);
- (3) _____ Discussion of the types of governmental functions currently performed by the Tribe;
- (4) _____ An identification of the source of the Tribal government's authority to carry out the governmental functions currently being performed (e.g. Tribal constitution, Tribal codes).

The Tribe has appropriate regulatory authority over surface waters or solid waste within the reservation.

The regulations implementing Section 518 of the CWA establish that EPA will restrict Tribal eligibility for treatment in a similar manner as a state (TAS) to lands and associated water resources which are within the exterior boundaries of a Federal Indian reservation. Is there anything similar with solid waste? The process for a tribe to demonstrate their authority over water resources and solid waste includes a submission of a statement signed by the Tribal Attorney General, or equivalent official, explaining the Tribe's authority to administer the desired program.

- (5) _____ A copy of the Bureau of Indian Affairs map of the area over which the Indian Tribe asserts authority pursuant to Section 518 of the CWA.
- (6) _____ A statement by the Tribal Attorney General (or equivalent official) which describes the basis for the Tribe's assertion under section 518(e)(2).

- (7) _____ Copies of any documents such as Tribal constitutions, by-laws, charter, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority.
- (8) _____ If CWA; identification of the specific surface waters relates for which the tribes proposes to establish jurisdiction.

The Tribe is reasonably expected to be capable of administering the relevant EPA program.

The information required to fulfill this requirement will vary, depending under which program (CWA, SDWA, RCRA) the Tribe applied for TAS. However, the information below is a good general guideline to ensure that the Tribe's application is complete with regard to this requirement. EPA is requesting information of the Tribe's executive, legislative and judicial functions to assure that the Tribe has the capability to administer a CWA, SDWA and RCRA programs.

NARRATIVE DESCRIPTION:

- (8) _____ A discussion of the Tribe's previous management experience.
- (9) _____ A list of any existing environmental (e.g. fisheries) or public health programs administered by the Tribe. The Tribes are not required to have experience in administering environmental programs, however, if they have experience (many Region 10 Tribes have such experience, especially in regards to fisheries) it is helpful to have this information.
- (10) _____ A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government. A description of the Tribal judicial system is helpful.
- (11) _____ A description of the existing, or proposed, agency of the Indian Tribe which will assume the relevant CWA, SDWA or RCRA program, or a plan which proposes how the Tribe will acquire and fund the maintenance of the necessary technical and administrative capability.

(12) _____ A description of the technical and administrative capabilities of the staff to administer and manage an effective program.

(13) _____ A description of the Tribe's authority equivalent to that of the Administrator under various environmental statute for example, Section 504 of the Clean Water Act. What this means is that the Tribe has the power upon receipt of evidence of a pollution source(s) that presents an imminent and substantial endangerment to human health or welfare, to bring suit in tribal court to restrain the person(s) to stop the discharge of such pollution or to take other such actions as may be necessary.

(14) _____ For regulatory programs only, a description of the relationship between regulated entities and the administrative agency of the Tribal government which is, or will be designated to administer the program. This is only applicable if the Tribe is applying for TAS in an area where they may be called upon to regulate a Tribal entity. If this is the case then the Tribe must show how they will resolve this regulator/regulated conflict.

 _____ This application is determined to be complete.

_____ This application is not complete. The following information or documents need to be provided.

This application was reviewed by:

 (Signature of reviewer) (Phone number) (Date)

PLEASE LET ME KNOW IF THIS IS A USEFUL CHECKLIST FOR YOUR PROGRAM!